

Office of the Secretary of Defense

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§ 169a.18 Administrative appeal procedures.

(a) *Appeals of Cost Comparison Decisions.* (1) Each DoD Component shall establish an administrative appeals procedure to resolve questions from directly affected parties relating to determinations resulting from cost comparisons performed in compliance with this part. The appeal procedure will not apply to questions concerning the following:

(i) Award to one contractor in preference to another;

(ii) DoD management decisions.

(2) The appeals procedure is to provide an administrative safeguard to ensure that DoD Component decisions are fair, equitable, and in accordance with procedures in this part. The procedure does not authorize an appeal outside the DoD Component or a judicial review.

(3) The appeals procedure shall be independent and objective and provide for a decision on the appeal within 30 calendar days of receipt of the appeal. The decision shall be made by an impartial official at a level organizationally higher than the official who approved the cost comparison decision. The appeal decision shall be final, unless the DoD Component procedures provide for further discretionary review within the DoD Component.

(4) All detailed documentation supporting the initial cost comparison decision shall be made available to directly affected parties upon request when the initial decision is announced. The detailed documentation shall include, at a minimum, the following: the in-house cost estimate with detailed supporting documentation (see § 169a.5(c)(ii) of this part), the completed CCF, name of the tentative winning contractor (if the decision is to contract), or the price of the bidder whose bid or proposal would have been most advantageous to the Government (if the decision is to perform in-house). If the documentation is not available when the initial decision is announced, the time allotted for submission of appeals shall be extended the number of days equal to the delay.

(5) To be considered eligible for review under the DoD Component appeals procedures, appeals shall:

(i) Be received by the DoD Component in writing within 15 working days after the date the supporting documentation is made available to directly affected parties.

(ii) Address specific line items on the CCF and the rationale for questioning those items.

(iii) Demonstrate that the result of the appeal may change the decision.

(b) *Appeals of Simplified Cost Comparisons and Direct Conversions.* (1) Directly affected parties may appeal decision to convert to contract based on a simplified cost comparison involving 11–45 DoD civilian employees or a direct conversion involving 10 or fewer DoD civilian employees. The appeal must address reasons why fair and reasonable prices will not be obtainable.

(2) Each DoD Component shall establish an administrative appeal procedure that is independent and objective; Installation Commanders must make available, upon request, the documentation supporting the decision to directly convert activities; appeals of direct conversions must be filed within 30 calendar days after the decision is announced in the Commerce Business Daily and/or FEDERAL REGISTER, and the supporting documentation is made available; an impartial official one level organizationally higher than the official who approved the direct conversion decision shall hear the appeal; officials shall provide an appeal decision within 30 calendar days of receipt of the appeal.

(c) Since the appeal procedure is intended to protect the rights of all directly affected parties, the DoD Component's procedures, as well as the decision upon appeal, will not be subject to negotiation, arbitration, or agreement.

(d) DoD Components shall include administrative appeal procedures as part of their implementing documents.

[50 FR 40805, Oct. 7, 1985, as amended at 57 FR 29210, July 1, 1992]

§ 169a.19 Study limits.

No DoD funds shall be available to perform any cost study pursuant to the provisions of OMB Circular A–76 if the study being performed exceeds a period of 24 months after initiation of such study with respect to a single function

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activity or 48 months after initiation of such study for a multi-function activity.

[60 FR 67328, Dec. 29, 1995]

Subpart C—Reporting Requirements

§ 169a.21 Reporting requirements.

(a) *Inventory and Review Schedule (Report Control Symbol DD-A&T(A) 1540)*. See § 169a.8(a) of this part.

(b) *Commercial Activities Management Information System (CAMIS) (Report Control Symbol DD-A&T(Q) 1542)*. (1) The purpose of CAMIS is to maintain an accurate DoD data base of commercial activities that undergo an OMB Circular A-76 cost comparison and CAs that are converted directly to contract without a cost comparison. The CAMIS is used to provide information to the Congress, Office of Management Budget (OMB), General Accounting Office (GAO), OSD, and others. The CAMIS is divided into two parts. Part I contains data on CAs that undergo cost comparison. Part II contains data on commercial activities converted to contract without a full cost comparison.

(2) The CAMIS report shall be submitted in accordance with the procedures in Appendix C.

(c) *Congressional Data Reports on CA (Report Control Symbol DD-A&T(A&AR) 1949) and Reports on savings on Costs from Increased Use of DoD Civilian Personnel (Report Control Symbol DD-A&T(AR) 1950)*. To insure consistent application of the requirements stated in 10 U.S.C. 2461 and 2463, the following guidance is provided:

(1) The geographic scope of section 10 U.S.C. 2461 applies to the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) Section 10 U.S.C. 2461 applies to proposed conversions of DoD CAs that on October 1, 1980, were being performed by more than forty-five DoD civilian employees. 10 U.S.C. 2463 applies to conversions from contract to in-house involving 50 or more contractor employees.

(3) DoD Components must not proceed with a CA study until notification

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to Congress, as required by 10 U.S.C. 2461. DoD Components shall notify the ASD(ES) of any such intent at least 5 working days before congressional notification.

(4) DoD Components shall annotate announcements to Congress when a cost comparison is planned at an activity listed in the report to Congress on Core Logistics (see § 169a.8(b)(1)(i)(2) of this part).

(5) The DoD Components shall notify Congress, at least 5 working days before sending the detailed summary report required by 10 U.S.C. 2461 to Congress. The detailed summary of the cost shall include: the amount of the offer accepted for the performance of the activity by the private contractor; the costs and expenditures that the Government will incur because of the contract; the estimated cost of performance of the activity by the most efficient Government organization; a statement indicating the life of the contract; and certifications that the entire cost comparison is available, and that the Government calculation for the cost of performance of such function by DoD employees is based on an estimate of the most efficient and cost-effective organization for performance of such function by DoD employees.

(6) The potential economic effect on the employees affected, the local community, and the Federal Government of contracting for performance of the function shall be included in the report to accompany the above certifications, if more than 75 total employees (including military and civilian, both permanent and temporary) are potentially affected. It is suggested that the Army Corps of Engineers' model (or equivalent) be used to generate this information. The potential impact on affected employees shall be included in the report, regardless of the number of employees involved. Also include in the report a statement that the decision was made to convert to contractor performance, the projected date of contract award, the projected contract start date, and the effect of contracting the function on the military mission of that function.

(7) By December 15th of each year, each DoD Component shall submit to